

REMARKS:

In the Office Action dated June 6, 2008, claims 1 and 8-30, in the above-identified U.S. patent application were rejected. Reconsideration of the rejections is respectfully requested in view of the above amendments and the following remarks. Claims 1, 9, 18 and 25-30 remain in this application and claims 2-8, 10-17 and 19-24 have been canceled.

Applicants thank the Examiner and the Examiner's supervisor for the interview on August 19, 2008. The above claim amendments reflect the helpful suggestions made during the interview.

Claims 1-30 were provisionally rejected under the judicially created doctrine of obviousness type double patenting as unpatentable over claims 1-35 of co-pending application no. 10/522,097, over claims 1-33 of co-pending application no. 10/519,978, and over claims 1-29 of co-pending application no. 10/522,157. The present claims are directed to a synergistic herbicidal combination of 4-[2-methyl-3-(4,5-dihydroisoxazol-3-yl)-4-methylsulfonyl-benzoyl]-1-methyl-5-hydroxy-1H-pyrazole, nicosulfuron (II) and a triazine. Applicants respectfully point out that the subject matter of the pending application is not effective but synergistic herbicidal mixtures. It is known in the art that a synergistic effect cannot be predicted from the herbicidal activity of the individual components. Applicants point out that components B and C in the presently claimed invention are different from components B and C in co-pending application no. 10/522,097, co-pending application no. 10/519,978, and co-pending application no. 10/522,157. Applicants contend that the synergistic effect of the presently claimed herbicidal combination could not have been predicted and therefore would not have been obvious over

claims 1-35 of co-pending application no. 10/522,097, over claims 1-33 of co-pending application no. 10/519,978, or over claims 1-29 of co-pending application no. 10/522,157. In view of the above amendments and discussion, applicants request that these rejections be withdrawn.

Claims 1-33 were rejected under 35 USC §103(a) as unpatentable over Sievernich (CA 2,334,955 corresponds to W099/65314). Sievernich does not disclose or suggest ternary synergistic herbicidal mixtures, comprising 4-[2-methyl-3-(4,5-dihydroisoxazol-3-yl)-4-methylsulfonyl-benzoyl]-1-methyl-5-hydroxy-1H-pyrazole, nicosulfuron and a triazine. None of the ternary mixtures disclosed by Sievernich et al. contains nicosulfuron as component B) and a triazine as component C). If one skilled in the art was looking for ternary synergistic mixtures other than those exemplified in Sievernich et al., he would only consider ternary mixtures based on the binary mixtures as exemplified in Sievernich et al. Due to the complex interactions of different active ingredients, there is no reason for one skilled in the art, having a wide selection of synergistically effective binary and ternary mixtures at his disposal, to take a risk with random mixtures from the generic disclosure. Surprisingly, the present inventors have now shown that the synergistic activity of mixtures comprising Ia.33 (Ia.29 present invention) and nicosulfuron or Ia.33 with atrazine as taught by Sievernich et al. in tables 21 and 68, can be surpassed with a ternary mixture comprising Ia.29, nicosulfuron and a triazine (present invention, tables 3 and 4). The synergistic effect resulting from components A, B and C as compared with components A and B, could not have been predicted from the disclosure in Sievernich CA 2,334,955. As discussed above, it is known in the art

that a synergistic effect cannot be predicted from the herbicidal activity of the individual components.

Applicants respectfully point out that the subject matter of the pending application is not effective but synergistic herbicidal mixtures. Support for these claims is provided by the respective experimental data. The Colby-value, which stands for the calculated additive effect, has to be compared to the observed effect (damage [%]). The data prove that the inventive mixtures result in a more than simply additive effect. As this is not predictable, the results are surprising and thus would not have been anticipated or obvious in view of the prior art. One skilled in the art would not have guessed or known which of the innumerable potential combinations from a generic disclosure or other prior art would show synergistic activity without detrimental effects. In view of the above amendments and discussion, applicants request that this rejection be withdrawn.

Applicants respectfully submit that all of claims 1, 9, 18 and 25-30 are now in condition for allowance. If it is believed that the application is not in condition for allowance, it is respectfully requested that the undersigned attorney be contacted at the telephone number below.

In the event this paper is not considered to be timely filed, the Applicant respectfully petitions for an appropriate extension of time. Any fee for such an extension together with any additional fees that may be due with respect to this paper, may be charged to Counsel's Deposit Account No. 02-2135.

Respectfully submitted,

By

A handwritten signature in black ink, appearing to read 'M. C. Kitts', is written over the printed name.

Monica Chin Kitts  
Attorney for Applicant  
Registration No. 36,105  
ROTHWELL, FIGG, ERNST & MANBECK  
1425 K. Street, Suite 800  
Washington, D.C. 20005  
Telephone: (202) 783-6040

MCK/cb